IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

Bail Appl..No. 4221 of 2007()

CC.532/2006 of J.M.F.C.,MALAPPURAM

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PETITIONER/ACCUSED

ABDUL KAREEM, PERAKAN KANDI HOUSE
ELAMARAM, EDAVANNAPPARA
MALAPPURAM DIST.

BY ADV. SRI.P.SANJAY
SRI.M.MUHAMMED SHAFI

RESPONDENTS/RESPONDENTS:

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1. STATE OF KERALA, REP. BY TE PUBLIC PROSECUTOR, HIGH COURT OF KERALA ERNAKULAM.

2. SUHARA D/O. SEETHI
MOOSHARIKKANDI HOUSE
PUTHUR AMSOM, OMASSERY DESOM,
KOZHIKODE.

R1 BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 4221 of 2007

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Dated this the 16th day of July, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under Section 498A I.P.C. He did not appear before the learned Magistrate. Consequently he finds a warrant of arrest issued by the learned Magistrate chasing him. The case is now pending before the J.F.C.M.- II (Forest cases), Manjeri. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence was not wilful, but was due to reasons beyond his control. The matter has been settled now. The petitioner is willing to appear before the learned Magistrate, but he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously.

2. The learned Prosecutor opposes the application.

3. I find merit in the opposition by the learned Prosecutor. It is trite after the decision in **Bharat Chaudhary** v. **State of Bihar** (IR 2003 SC 4662) that powers under Section 438 Cr.P.C. can be invoked even in favour of a petitioner, who apprehends arrest in the

pending case on the strength of a non-bailable warrant issued by the court. Even that is not by itself sufficient to justify the invocation of the jurisdiction under Section 438 Cr.P.C. I am unable to find any compelling reasons which would justify invocation of the jurisdiction under Section 438 Cr.P.C.

4. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on

merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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